



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2023-0290]

Notification of Policy for Implementation of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 for Flight Training, Checking, and Testing in Experimental Aircraft

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notification of policy.

SUMMARY: This notification provides information on flight training, checking, and testing for compensation in aircraft that hold experimental airworthiness certificates in compliance with the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (the Act), which was signed by President Joseph R. Biden on December 23, 2022. This notification provides sample scenarios to illustrate when a letter of deviation authority (LODA) is required and scenarios when a LODA is not required.

DATES: The policy described herein is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this policy notification, contact Erin Cappel, General Aviation and Commercial Division, General Aviation Operations Section, (202) 267-1100, or email 9-AFS-800-Correspondence@faa.gov, 800 Independence Ave., S.W. Washington, DC 20591.

SUPPLEMENTARY INFORMATION: President Joseph R. Biden signed the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (the Act) (Public Law 117-263) on December 23, 2022. Section 5604 of the Act mandates self-enacting provisions related to flight training, checking, and testing in experimental aircraft. The

Act states that flight instructors, registered owners, lessors, or lessees of an experimental aircraft shall not be required to obtain a letter of deviation authority (LODA) to allow, conduct, or receive flight training, checking, and testing in experimental aircraft, if:

- 1) The flight instructor is not providing both the training and the aircraft;
- 2) No person advertises or broadly offers the aircraft as available for flight training, checking, or testing; and
- 3) No person receives compensation for the use of the aircraft for a specific flight during which flight training, checking, or testing was received, other than expenses for owning, operating, and maintaining the aircraft.

The Act provides relief from the § 91.319(h) LODA requirement for certain persons who wish to receive training, checking, or testing in an experimental aircraft. Likewise, the Act supersedes the 2021 FAA Notification of Policy requiring owners and flight instructors in certain circumstances to obtain a LODA through a streamlined process.¹ The Act does not enable persons to broadly offer flight training in these aircraft (e.g., advertising online or by word of mouth). Likewise, the Act limits the amount of compensation for use of the aircraft for a particular flight to only expenses for owning, operating, and maintaining the aircraft related to that training, checking, or testing flight. The instructor providing the training may receive compensation for their services but may not provide the aircraft. Persons who wish to broadly offer flight training, testing, or checking in experimental aircraft, or who seek financial gain for provision of an aircraft for those services, will still be required to obtain a LODA (FAA Order 8900.1, Volume 3, Chapter 11, Section 1).

Sample Scenarios

¹ 86 FR 36493 (July 12, 2021).

The FAA provides the following flight training scenarios to provide greater clarity on the impact of section 5604 of the Act and the situations in which a LODA is still required.

Scenario A: An experimental aircraft owner wishes to hire a flight instructor to receive flight training in the owner's own aircraft. The owner intends to pay the flight instructor for the instruction. This operation is permissible under the Act without a LODA.

Scenario B: An experimental aircraft owner seeks to provide flight training in their aircraft to others. This owner (or a person or entity action on their behalf) is willing to allow almost anyone who comes to receive flight training in the owner's aircraft, provided the person receiving training pays a fee. The owner advertises flight training on a website and/or offers these training flights to attendees at various air shows. This operation is not permissible under the Act and would continue to require a LODA.

Scenario C: Four people co-own an experimental aircraft as part of a flying club. One of these people needs to get a flight review in the aircraft, so that person hires a flight instructor and pays the instructor for the training, plus pays a pre-arranged hourly rate that covers fuel used during the flight, as well as ongoing maintenance costs. Each co-owner pays the same hourly rate as a part of a co-ownership contract. Members of the flying club do not expect monetary gain or profit, but rather the fee is in place to cover the costs of owning, operating, and maintaining the aircraft. This scenario is permissible under the Act without a LODA.

Scenario D: An owner of an experimental aircraft starts a flying club and advertises to gain flying club members. This person charges a fee for "club membership," and club members are given a flight training flight or series of flights in return. This fee yields a profit for the owner in excess of the compensation permissible under the Act. This operation includes broadly offered flight training, as well as an operator offering

both the aircraft and the instructor. This operation is not permissible under the Act and would continue to require a LODA. Depending on the circumstances, this operation may also require some other kind of authorization from the Administrator, such as an air carrier or commercial operator certificate, or a commercial air tour letter of authorization.

Effect of Legislation on Streamlined LODA process

As noted in the July 2021 Federal Register notification, the FAA has long emphasized the importance of pilots being trained and checked in the aircraft they will operate. Specifically, the FAA underscored that it is critical that pilots understand and are familiar with the particular systems, procedures, operating characteristics, and limitations of the aircraft they will operate. This flight training is distinct from a situation where an aircraft with a special airworthiness certificate is “held out” broadly for training to individuals who pay for both the flight training and use of an aircraft that they will not have further access to upon completion of LODA training. It is also distinct from the broadly offered basic flight training that can be accomplished effectively and safely in any standard category aircraft.

In the July 2021 Federal Register notification, the FAA established a streamlined process that allowed owners and flight instructors to apply for a LODA through an expedited process and accomplish certain flight training in experimental aircraft. Through this expedited process, the FAA was able to promote flight training for owners and those affiliated with the owners of experimental aircraft without overburdening the segment of the regulated community. The FAA maintained the more rigorous LODA process for flight training broadly offered to the public. With the passage of section 5604 of the Act, this streamlined LODA process is no longer necessary. The FAA will cease processing LODAs through this process. In addition, the FAA considers LODAs issued under this

process to be terminated.² Henceforth, the requirements of section 5604 will govern the flight training, checking, and testing that can be accomplished in experimental aircraft without a LODA. Flight training, checking, and testing that is broadly offered to the public, or that does not conform to the stipulations of the Act will continue to require a LODA.

Issued in Washington, DC, on February 2, 2023.

Wesley L. Mooty

Acting Executive Director, Flight Standards Service

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² The FAA notes that section 5604 addressed only experimental aircraft. The July 2021 policy pertaining to exemption relief remains valid for limited category and primary category aircraft.